

VOL. II

Supreme Court U. S.

FILED

MAY 14 1979

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS

APPLICABLE LEGAL PRINCIPLES

There is a question of conflict of laws involved herein, however the statutory law of California and the law of Louisiana are substantially alike with regard to the arrest and detention of the juveniles. Both states prohibit detention of juveniles at the police station, Louisiana at LSA-Rs 13:1577, and California at W and I Code Section 507: "No court, judge, referee or peace officer shall knowingly jail or lock up in detention any person under the age of 18 years, unless a judge of the juvenile court shall determine that there are no other proper and adequate facilities for the care and detention of such a person . . . "California has not as yet decided the question of the validity of a confession secured during an unlawful detention, as has Louisiana. Sodaro and Woodrum were acting in concert with and on behalf of the Lafourche Sheriff's deputies, and their acts are the responsibility of the Louisiana officers, *Anderson v. US* 318 US 356, 63S Ct. 599. It is our contention that while the *lex loci delicti* is applicable. Donnie Collum was protected by the law of Louisiana and the law of California, and that he had the right to claim protection, where afforded, by the laws of both states. For example, Sodaro and Woodrum by their precipitous action as agents for the Lafourche deputies deprived defendant of the protection of having his mother present that he would have received from the Louisiana officers, who requested her presence when they had arrived. The boys were also entitled to protection under California from confinement in a jail, etc. The application of one set of protective statutes does not exclude the application of others. We are unable to find any cases directly on this; but we vigorously urge that the juvenile is entitled to protection of laws of both states, and in event of a conflict, the law of Louisiana prevails.

We anticipate that the state will assume the position that Donnie Collum falls outside of the constitutional provision for juvenile laws, La CONST. Section 19, because he was 15 years of age and is alleged to have committed a capitol offense:

however, we refer your Honor to the wording of that section of the constitution which states that except for a minor, 15 years or over, alleged to have committed a capital offense, the determination of guilt or innocence "shall be exclusively pursuant to juvenile procedures which shall be provided by law" This refers solely to the procedures and does not remove the juvenile from the protection of all substantive juvenile laws enacted for this protection, such prohibition of detention in a police station during investigation of the case. Here again we have a res vova proposition. It would be begging the question to say that since an illegal detention and interrogation developed evidence to merit an accusation of a capital offense then the child has no standing to question the legality of those acts which produced the accusation. Donnie Collum did not fall outside of Juvenile Laws at any time during the investigatory stages of this matter insofar as those statutes protect the very young.

A question never considered squarely and thoroughly by any Louisiana court, and never considered by the Louisiana Supreme Court at all, is that concerning the capacity vel non of a minor to waive his constitutional right against self incrimination, or to counsel. The question was considered fully by the court of California in *People vs. Lara*, 62 Cal. Rep. 586, 432 p2d 202, and while the majority opinion is contrary to our position, the dissenting opinion more accurately reflects the attitude of Louisiana law and our courts.

In Louisiana a minor has an almost absolute disability from exercising any act of judgment from which legal consequences might flow. He is not relieved of responsibility for physical acts of a tortious or criminal nature, but is legally incapable of doing anything of a legally binding nature or of waiving any rights, no matter how advantageous it may be to him, without the consent or concurrence of his parent or tutor.

CC34 "Age forms a distinction between those who have, and

those who do not have sufficient reason and experience to govern themselves and to be masters of their own conduct. But as nature does not always impart the same maturity and strength of judgment at the same age, the law determines the period at which persons are sufficiently advanced in life to be capable of contracting marriage and forming other engagements".

The minor, under 18 years of age, cannot contract; Louisiana Civil Code 1785. He can not buy a bicycle even at a great bargain. And the person who contracts with him may set the contract aside, no matter how much the minor wants it, unless his parent consents or he reaches majority in time to ratify it: Louisiana CC 1791. He cannot marry without the consent of his parents: Louisiana CC 92. He cannot enlist in the military service: LSA, RS 29:29. Nor may he manage his own property. He can work and earn money but can't spend it or invest it without parental consent. Louisiana CC 221. Under 16 years of age, he cannot dispose of any of his property, even by will, except that he may will property to his wife, if he has one: Louisiana CC 1476.

What property can a minor have more valuable than his constitutional and legal rights? What more valuable right can a minor have than the protection of his parent's knowledgeable and mature judgment?

Can it be the law that a minor who can not waive his disability to contract without parental consent can waive his constitutional rights without parental consent or, as in this case, against the parents wishes? We say no.

Is it the law that a child who can not give away a worn out toy, can give up his right against self incrimination and thereby lose his freedom or even his life? We say, no.

The state may argue, as was said in *People vs. Lara*, Cali-

fornia that in order for the state to protect itself an exception to the law is justified. It may well be, but that is a legislative function not a judicial one; and, until the legislature creates an exception the legal disability against a minor giving away property, or constitutional rights, persists and is the law.

Donnie Collum did not have the right to give up his right to counsel, or his right against self incrimination without the consent of his mother.

We take no issue with the arrest in this matter. There was probable cause to arrest Donnie and Scott Collum on a charge of theft of Jessie Collum's automobile. Cal. W and I SEc. 625 .1(b).

Until they were questioned and confessed there was no probable cause, and none was asserted, to arrest these boys for murder. In fact, the state made no attempt to so charge them prior to the confessions. On June 4, 1977 armed with knowledge of the confessions the state secured warrants for their arrest on charges of murder. We contend that prior to that time, certainly no later than the time that Scott Collum confessed, the state and its agents, Sodaro and Woodrum, had neither the reason nor the legal capacity to treat Donnie Collum as anything but a juvenile. He was under arrest by and for the State of Louisiana, California officers has been asked by Louisiana officers to interrogate the boys, T35L13-22, subject to all applicable laws of this state, those that might protect him as well as those that might punish him. He was under arrest in the State of California and was entitled to the protection of any laws of that state which might protect him. He had committed no crime in that state. Under the law of California he was illegally detained in a police station in contact with criminals (One of whom influenced him to believe that he would get probation or confinement for "three years at the most.")

We do not find that the California court has ever ruled on the question whether a confession taken during illegal confinement is inadmissible for that reason. The Louisiana Supreme Court has never done so but the 4th Circuit Court has in three cases held affirmatively that illegal detention invalidates a confession, In re Garland, 160 So.2d 340, In re White 160 So. 2d 344, and In re Wesley 285 So.2d 308.

Even applying the rule of "totality of circumstances" in People vs. Lara, infra, the confession herein must be found inadmissible.

(1) Donnie Collum, known to be aged 15. T34L28-29, was arrested on June 3, 1977, about 2:45 p.m. for "auto theft."

(2) The real purpose of arresting and detaining him was kept from him and from Mrs. Mendoza, his mother, who could have requested counsel before the boys were interrogated or could have warned them not to talk with the police.

(3) She was misled about the purpose of the arrest and interrogation.

(4) Mrs. Mendoza was excluded from the interrogation. The California officers made it clear in their testimony that they did not want her present, T62L7-9, and that if she had asked to see them (he did not recall whether she did) he would make her wait until he completed the interrogation. T8iL6-14, Also T62L2-9.

(5) Donnie was handcuffed to a chair during interrogation, T4iL26-29.

(6) In a Police Station, T36L11-15.

(7) In contact with criminals whom he mistook for jailers, T315L4-23.

(8) Was misled by a criminal to believe that he would get probation or at most three years, T318L31-T319-L8.

(9) No attempt was made to turn Donnie over to Juvenile Hall for handing and no report was made to the Hall until "close to midnight", T43L18-20.

(10) The police did not, as required by law, take the boys to Juvenile Hall "Because we wanted to interview them before they went to Juvenile Hall", T43L26,27.

(11) Donnie was held 5½ hours before he confessed, T118L22-29.

(12) But during that time he asked for an attorney and interrogation was terminated for awhile, T334L25-T335L14.

(13) Donnie did not request of the Louisiana deputies that an attorney be provided for him because he was relying on the California officers to provide one, T324L29-T325L10.

(14) He obviously did not comprehend the Miranda warning, T319L10-14;

(15) He was never taken to a probation officer, as required by law.

The entire interrogation of Donnie and Scott Collum was conducted under a cloud of deceit, and nowhere is the deceitful purpose of the officers more apparent than in their misleading of Mr. Mendoza to waive her right to counsel and to waive extradition. She was advised by an honest deputy to seek counsel, T246-2-13. When Sodaro learned of it he became "very upset," went to her home and tried to learn who had given her this good advice, then threatened to place the boys in Glen Helen reformatory where they would be subject to homosexual rape and abuse and told her that they would have

to go to Louisiana anyway. Then under oath he lied about what he was doing, T357L20-T359L22. He lied about what the deputy told Mrs. Mendoza. He lied when he said his interest was only concern for her that caused him to urge her to waive extradition. He lied when he said the boys wanted to go back to Louisiana (he had threatened them with Glen Helen also T343L3-5). He lied when he said he went back to the trailer to clarify a misunderstanding (he went to learn the name of the deputy who had advised Mrs. Mendoza to fight extradition and push her into a waiver). He lied when he said he did not remember whether he had discussed Glen Helen Reformatory with He lied then as he had lied when he denied Donnie asked for an attorney, and as he lied when he denied he talked with Mrs. Mendoza and sent her home, as he lied when he said she did not ask to see her son.

Woodrum - a master at sticking to favorable facts and evading unfavorable ones, has convenient failures of memory, and is not going to contradict his superior, Sergeant Sodaro.

Together, a pair of skilled, experienced police interrogators had Donnie and Scott Collum outclassed to the point where it was no contest, yet the major part of their "class" was deceit and failure to obey the law of their own State.

The deceit in causing the defendant to waive his constitutional rights began at the time of arrest when they hid the real purpose of the arrest. While a police officer need not disclose all of his intentions, he would not be permitted to deliberately mislead a person to include him to give up his rights.

When Mrs. Mendoza went to the police station to seek release of her sons. She was sent home, and told that police only wanted to ask "routine questions." She was told that someone would be sent to tell her when she could return to get the boys. Later a policeman did, in fact, go to her home to tell her she could see the boys. T243L2-18 also T248L9-

T249L16.

Only then was she told that the boys were implicated in murder, and only then was she allowed to see them.

When the police stated that they only wanted to ask routine questions, they were lying, and this lie, among others, deprived Mrs. Mendoza of the right to protect her sons, and led to their "Waiver" of their rights. This statement about "routine questions" moved the matter from the negative, possibly acceptable, failure to disclose information, to the positive, absolutely unacceptable, misleading and deceiving.

In *In re Wesley*, 285 So.2d 208 the court quoted approvingly from *Gallegos vs. Colorado*, 370 US 49, 82 St. Ct. 1209 Wherein "the failure to send for his parents" was a consideration in deciding due process had been violated. Here the parent was present but excluded by the police.

Although Sodaro and Woodrum deny that Donnie asked for an attorney, they nevertheless asked a few more questions, "Just briefly, and then we terminated it." T13L14. They had already been interviewing him 30 to 40 minutes. T14L1-2. The Court may choose to disregard, or even to disbelieve, Donnie's statement that he asked for an attorney, but ought the Court to assume that Donnie is lying and the good policeman telling the gospel truth? Had Donnie not asked for a lawyer, would the questioning have been stopped? After 30 to 40 minutes of fruitless examination, the subject begins to tremble, becomes very nervous and emotionally upset. First the first time, they are getting results, they have struck a sensitive spot. Is this the time to quit? of course not. This is the time to bore in and get through the cracks in the subjects shell. This is not the time to quit, and allow the subject to compose himself, to patch his cracks. Unless he has asked for a lawyer. Unless Donnie Collum was telling the truth about requesting a lawyer, it would have been ridiculous for the police

to stop questioning him at the very moment that they were most likely to be successful. These policemen had one purpose in mind to get confessions to murder. They had already resorted to deceit to get the boys away from their mother. They used the theft charge like a subterfuge, while hiding the information that Collum was dead, to wisk the boys away from her. True, they had no duty to disclose Jessie Collum's death, but the whole picture is of a campaign designed and executed to mislead and deceived defendant's mother, to evade the clear, plain law of California re Juveniles and to secure a confession by causing the defendant to waive Constitutional and legal rights by confusion, misunderstanding and deceit.

Sodaro denies Donnie asked for a lawyer, yet he states, T357L10-14, that if a person asks for an attorney he would do exactly what he did in this case -return him to jail. At the very best time to question a prisoner he quite (out of concern for him- although he admits he was presuming him guilty of 4 murders) and returns him to jail? Not very likely.

California law, like Louisiana law, provides that a minor shall not be detained in a jail or lockup unless a judge of the Juvenile Court shall determine that there are no other proper and adequate facilities or unless transferred by Juvenile Court to another court for trial, or after conviction of a felony. Sodaro and Woodrum state that the law is regularly and routinely violated by them.

California W and I Code §625.1(c) provides that a peace officer may take temporary custody of a minor under 18 years of age, without a warrant, whenever the officer has reason to believe that the minor has committed a felony.

The officer has 3 alternatives in handling such minor, California W and I Code 626,

- (a) He may release such minor; or
- (b) He may prepare in duplicate a notice to appear before

the probation officer of the county in which such minor is taken into custody . . . Upon execution of the promise to appear, he shall immediately release such minor. . ."

(c) He may take such minor without unnecessary delay before the probation officer of the county in which such person was taken into custody . . . and deliver the custody of the minor to the probation officer.

The law of California clearly provides that a minor accused of a felony shall:

- (1) Be released, or
- (2) Be noticed to appear in Juvenile Court and upon signing a promise to appear be released, or
- (3) Be turned over to a juvenile probation officer for detention. This same procedure is provided for Dependent Children at W and I code §307. Clearly had the Legislature of California intended to give police officers a free hand to arrest, detain and interrogate minors they would not have enacted the identical procedure into the law twice.

The law of California does not provide for nor contemplate that a minor should:

- (1) Be arrested and detained at a police station.
- (2) Held away from parents or attorney in that place.
- (3) Interrogated by police officers at all, much less over 12 hours.
- (4) Held for 8 hours without notifying Juvenile Hall.

Although these policemen may not believe it, the legislature obvious means that the probation officer not the policeman shall have custody of the minor from the earliest possible moment, otherwise they would not have prohibited them from confining the minor in jail. We can presume that in California, as in Louisiana, it is the people through their legislature, not the

police, who determine what is the law; but, as a practical matter, we can force them to obey it only by suppressing evidence of their unlawful acts. The rule of *Mapp vs. Ohio*.

While the law of California requires that a juvenile be taken to a probation officer, Woodrum stated that he treated juveniles just like adults in this regard, T33L27-31. In *Anderson vs. U.A.*, 318Us356, 63 S.Ct. 599, the United States Supreme Court held that a confession secured by county officers for Federal Agent with whom they were cooperating was inadmissible because the county officers had violated the Tennessee statute which required that the accused be brought before a magistrate before incarceration. It would be impossible to find a case closer than this one, except in one respect: the Court noted that the law was enforced in Tennessee whereas here we are dealing with officers who make a practice of disregarding the law. Can it be said that their disregard for the law constitutes a tacit repeal of it?

SUMMARY

We concede the validity of the arrest under California and Louisiana law.

We urge the Court that the law of the forum is applicable; but that in addition, the defendant is protected by all applicable California law unless there is a conflict with the law of Louisiana which would then control.

We contend that the Louisiana constitutional provision which makes defendant culpable as an adult applies only after he is formally charged with a capitol offense, but in any event does not operate to deprive him of protective laws during the investigative stages of the case.

We contend that a minor is without legal capacity to waive constitutional rights without the consent of his parent.

WE contend that even applying only the "totality of circumstances" rule this case falls within the purview of *In re Wesley*, *In re Garland* and *In re White* in Louisiana law and *People vs. Burton* 491 p.2nd 793, in California law, and *Anderson vs. US* in Federal constitutional law.

APPENDIX H

Pages from Trial and Hearing Transcripts Cited in Petition

TRANSCRIPT OF PROCEEDINGS
STATE IN THE INTEREST OF SCOTTY LYNN COLLUM
VOLUME I

(27)

STATE OF LOUISIANA
IN THE JUVENILE COURT
FOR THE PARISH OF LAFOURCHE

STATE OF LOUISIANA
IN THE INTEREST OF
SCOTTY LYNN COLLUM

NO. 1233

SPECIAL JUVENILE

MOTION TO SUPPRESS CONFESSION

Defendant, Scotty Lynn Collum, through his undersigned attorney, moves to suppress for use as evidence all written and/or taped confessions or other written and/or taped inculpatory statements obtained from mover by certain public officers and/or police officers or deputies, whose names are unknown to mover.

All of said confessions and other inculpatory statements are admissible in evidence because they were not made by mover to said officers or anyone else freely and voluntarily, but were made under the influence of fear, duress, intimidation, menaces, threats, inducements, promises and/or without mover having been advised of his right to remain silent right to counsel, right against self-incrimination and other constitutional rights.

/S/ Maurice J. Serpas
Maurice J. Serpas
Attorney for Defendant
P. O. Box 1208
Galliano, LA 70354
Phone: 504 475-5185
(Thx 446-1619)

(55)

THE COURT:

Swear in Detective
Woodrum.

THE WITNESS, ROBERT J. WOODRUM, AFTER BEING
DULY SWORN TO TELL THE TRUTH, THE WHOLE
TRUTH, AND NOTHING BUT THE TRUTH, SO HELP
HIM GOD, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. NAQUIN:

Q. Please state your full name for the
record?

A. Robert J. Woodrum. W-o-o-d-r-u-m.

Q. By whom are you employed?

A. I'm employed by the San Bernardino
County Sheriff's Office.

Q. In what capacity?

A. I hold the rank of detective.

Q. Detective Woodrum, on June 3rd,
1977, did you have occasion to see
one Scotty Collum?

A. Yes, sir.

Q. Where did you happen to see him on
this particular day?

(55)

(65)

A. I first saw him at the Red and White
Trailer Park at 16501 "D" Street,
City of Victorville.

BY THE COURT REPORTER:

Q. "D" Street?

A. "D" as in David.

BY MR. NAQUIN:

Q. Do you recall the time of day?

A. Approximately 25 minutes after two
P.M.

Q. Detective Woodrum, do you see
Scotty Collum present in the court-
room?

A. Yes, sir.

Q. Would you please identify him?

(65)

present in the courtroom, the
mother of the juvenile in this
proceeding.

(PAUSE)

MR. SMITH:

She's been so advised, Your
Honor.

(65) THE COURT:

Let the record so reflect.
Proceed.

BY MR. NAQUIN:

Q. Detective Woodrum, when you began questioning the individual with reference to the death of his father, what was his physical or emotional reaction to that?

A. At that point I believe when we first told him of the death of his father and family I think it was -- he didn't become emotional, but like it was news to him, he wasn't aware of it up until that point.

Q. You then proceeded to interrogate the individual?

A. Yes, sir.

Q. Okay. How long did this interrogation last?

A. From beginning to end I think we interviewed him in the room probably for two, two and a half hours.

Q. At anytime during this interrogation did you tape the interview?

A. Yes, sir.

Q. When did you tape the interview?

(65)

A. Just shortly after he admitted his participation in the homicides.

MR. SERPAS:

Your Honor, again I must object and ask the witness to refrain from saying exactly what was said or his conclusions of the saying.

(72)

park, your specific purpose was to arrest these two boys for the Louisiana authorities?

A. Yes, sir.

Q. You stated that you explained to these boys the charge on which you were arresting them. Do you remember exactly what you told them?

A. Probably not word for word, but I remember basically what was said, yes, sir.

Q. Could you repeat basically what you said to explain to them about this charge?

A. Yes. After we identified ourselves, I told both of them that we were there to take them into custody on the authority of the Louisiana

(72)

sheriff's office for the theft of an automobile from this state.

Q. That was the extent of your explanation to them?

A. At that point, yes, sir.

Q. How were the boys handcuffed?

A. They were handcuffed in the rear, their hands behind their back.

Q. And you read from the card that you have in your possession their Miranda rights while you were driving the car and then back to the station?

A. Yes, sir.

Q. Had you ever seen Scotty Collum prior to that day?

A. Not to my knowledge, no, sir.

Q. What time did you all leave the station to go to make the arrest?

A. Probably about fifteen minutes before we made the actual contact.

Q. When did you notify the sub-station that you were

(75)

effect or words to this effect, "You

(75)

(75)

remember we read your rights," and "Do you remember what they are"?

A. I probably said to him, "Do you recall the rights that I read to you earlier?" and then would say, "Are you still willing to discuss the case with us," or "Do you still want to talk to us?"

Q. When you arrived at the sub-station you indicated that you placed the two boys in one interview room, is that correct?

A. That's correct, sir.

Q. Did you handcuff them to the chair?

A. I don't recall, but we probably would have. It is common that we will remove the cuffs from the individual when he's cuffed to the rear and maybe handcuff him to a chair or to a table. Sometimes we don't handcuff them, but probably in this case we would have.

Q. How did you handcuff them to the chair?

A. Placing one -- leaving one cuff over the wrist and slapping the other cuff or securing it around the arm of the chair.

(75)

Q. How long were the two boys left in the interview room before you and Sergeant Sodaro returned?

A. Maybe fifteen minutes.

Q. During this time you got your notebooks and things together then went back into the room, is that correct?

A. Yes, sir.

Q. Did you all talk to anybody else at that time about the case?

(94)

A. No, sir.

Q. Now, in conducting this interview what is the first thing that you spoke with Scotty about?

A. About the Cadillac that was taken from this jurisdiction.

Q. After this did you have occasion to speak with him concerning the death of his father?

A. Yes, sir. We did.

Q. Prior to this was he again reminded of his rights?

A. Yes, sir. He was.

(94)

(94)

Q. Did he again acknowledge --

A. Yes, sir. He did.

Q. At this time did he ask for an attorney?

A. No, sir. He did not.

Q. Did he ask you to stop questioning him?

A. No, sir. He did not.

Q. Did you tape this particular interview?

A. We did, but not at that time.

Q. Okay. When did you tape it?

A. When we went over it the second time.

Q. So Scotty spoke with you concerning the death of his father?

A. Yes, sir.

Q. After which you taped it?

A. Yes. We asked him if he would go over it again and if we could tape it, and he agreed.

Q. You advised him that it was going to be taped?

(94)

A. Yes, sir.

Q. Were the statements prior to the tape and the statements on the tape that Scotty gave the same?

A. The story that was told was the same. Whether

(99)

Q. Were the boys handcuffed when they were in the unit?

A. Yes, sir. They were.

Q. In which manner?

A. They were handcuffed with their hands behind their back.

Q. Were any chains placed on the boys?

A. No, sir.

Q. Detective Woodrum was driving the vehicle?

A. Yes, sir. He was.

Q. You stated that Detective Woodrum read the two Collum boys their rights?

A. Yes, sir.

(99)

(99)

Q. Was that while he was driving the vehicle?

A. Yes, sir. It was.

Q. Did they make any statements prior to Detective Woodrum reading the rights?

A. No, sir.

Q. Isn't it true that Officer Searcey was sitting behind you in the rear seat?

A. I said he may have been. I kind of feel that he was probably sitting in the middle but it was possible he was sitting behind me.

Q. When Detective Woodrum read the Miranda rights, did -- did he also read the reverse side of that card in reference to a waiver?

A. Yes, sir. He did.

Q. He read it verbatim?

A. The first statement he read verbatim. The second statement, which we are no longer required to read anymore, once they agree to talk to us, sometimes

(104)

out except those arrested on Thursday after transportation and Friday during the day, which would probably have been no more than maybe ten in there.

Q. These would have been adult inmates?

A. They would have been adult inmates, yes, sir.

Q. Are adults booked at this sub-station?

A. Yes, sir.

Q. Would you describe this Interview Room-B that you alluded to on direct examination?

A. The walls are painted, you know, a tannish color.

(105)

It's probably about 8 by 8 to 10 by 10. It has accoustical ceilings. The floor is carpeted. There's a table and depending on how many chairs you want to carry in there.

Q. How many chairs were in there at the time that Scotty was there?

A. There was at least three.

Q. Were you seated in one of the chairs?

(105)

(104)

MR. SMITH:

Well, Your Honor, I think that's going to become relevant as far as what is the size of the facility and whether there is any mingling with the prisoners and this juvenile.

THE COURT:

Well, you can ask if they all mingled. I think you can ask what the size is, but -- I will go ahead and let you ask it. I'm going to overrule the objection, but if it has relevance it's of a very minimal value. But since it might have some minimal relevance, I will allow it.

MR. SMITH:

Thank you, Your Honor.

BY MR. SMITH:

Q. Would you answer the question?

A. Transportation comes up on Thursday night, because we don't hold anybody there except for Court, and the weekend was coming up, so probably most of them would have been moved

(105)

A. Yes, sir. I was.

Q. Woodrum and Scotty were seated in the other chairs?

A. Yes, sir.

Q. Was Scotty handcuffed to the chair?

A. No. I believe before we started the interview we did unhandcuff him. Prior to that he was probably handcuffed to the chair, yes, sir.

Q. During the period that he was waiting for you and the other officer to come back in the room, he would have been handcuffed to the chair?

A. Yes, sir.

Q. And the doors to this interview room would have been locked?

A. Closed, not locked.

Q. Not locked. There's only one door and no windows?

A. That's affirmative, yes, sir.

Q. What time did you start questioning Scotty in this room?

A. Approximately four o'clock.

(105)

Q. You stated that Officer Woodrum reminded Scotty of his rights prior to the questioning in this room?

A. Yes, sir.

(106)

Q. By reminding him of his rights he just said, "Do you recall the Miranda rights that I have previously given you," or words to that effect?

A. Yes, sir.

Q. And Scotty answered, "Yes"?

A. Yes, sir.

Q. That was the reminder?

A. Yes, sir.

Q. When Scotty answered, "Yes," in reference to recalling his Miranda rights, do you recall exactly what he said?

A. At what point?

Q. At that same point I just talked about, prior to --

A. You mean his acknowledgement of his rights, understanding?

(106)

(106)

Q. Yes.

A. I believe it was, "Yes."

Q. It could have been, "Yes, I guess"?

A. No. It wasn't, "I guess." It was, "Yes," or "Yeh," something like that.

Q. When you began interrogating Scotty, the first thing you asked him about was the Cadillac automobile?

A. The first thing he was asked about was the Cadillac, yes, sir.

Q. Did he at first deny any knowledge of such a Cadillac automobile?

A. No, sir.

Q. You stated that Scotty made certain inculpatory statements. Was the first such inculpatory statement in reference to the Cadillac automobile or in (107) reference to the murders of Jessie Collum and his family?

A. You will have to explain "inculpatory." I don't believe I understand --

Q. An incriminating statement.

(107)

(107)

A. Oh, the first ones were in reference to the Cadillac. There was nothing mentioned about the Collum family or deaths until after he had completed his story about the Cadillac and how they got to California, et cetera.

Q. Wasn't it only after you told Scotty that there were certain discrepancies in his story that he made any statement about this Cadillac?

A. No, sir.

Q. You didn't tell Scotty that there were certain discrepancies in his story?

A. There was a point during the interview, and I believe that it was after he was again reminded of his rights and we started talking about the homicides, that the differences or the parts of his story that didn't make sense were brought up.

Q. You had already talked to Donnie Collum at this time?

A. Yes, sir.

Q. After arresting Scotty Collum, when is the first time that you recall seeing Mrs. Peggy Mendoza at the Victorville Sub-Station?

(107)

A. My first recollection of seeing Mrs. Mendoza again after the contact at the trailer was as we were leaving the sub-station to go to Ontario Airport.

Q. What time was this?

(108)

A. It seems to me that it was somewhere around ten o'clock.

Q. Did you have a conversation with her at this time?

A. Yes, sir. We did.

Q. What was the nature of that conversation?

A. We talked about the car, and at that time we advised her of the homicides, and she became very upset, and I think we comforted her somewhat and we went into the office with her. And we were running late, so I don't think we stayed very long. But that's basically what it was about.

Q. You told her you were on your way to pick up certain Louisiana police officers?

A. Yes, sir.

(108)

(108)

Q. You told her that you had taken a statement from her two sons?

A. We had advised her that they had admitted to being involved or participating in the crimes, yes, sir.

Q. At anytime prior to seeing Mrs. Peggy Mendoza at the station after the arrest, did you have any telephone contact with her?

A. Not that I recall.

Q. While interrogating Scotty, did any other officer tell you that Mrs. Mendoza was outside waiting?

A. I don't believe so.

Q. A Deputy Qualls didn't tell you that?

A. Deputy Qualls was the jailer that night, you know, so -- I don't know. He may have been in the front helping the dispatcher, but I don't recall anybody mentioning that she was there.

Q. Did Deputy Qualls interrupt at anytime during this interview?

(109)

A. With Scotty?

Q. Yes.

(109)

(109)

- A. I believe he did.
- Q. For what purpose?
- A. To advise me that Donnie wanted to see me.
- Q. Did you leave at that point?
- A. No, sir.
- Q. After this initial interview with Scotty, did he request to see his mother?
- A. With Scotty, after the initial interview. Well, there was only one interview with Scotty. I don't know if he requested it or that I told him that we were going to let him see his mother.
- Q. This was after the tapes were made?
- A. Yes, sir.
- Q. At no time prior to this did you tell him he would be able to see his mother?
- A. Not that I recall, no, sir.
- Q. You didn't tell him that, "As soon as we finish making this tape," he would be able to see his mother?
- A. No, sir. I don't believe so.

(109)

(110)

- Q. Did you or Officer Woodrum ever specifically ask Scotty if he would like to see an attorney?
- A. Other than his rights?
- Q. Right.
- A. No.
- Q. Did you ever ask him if he would like to see his mother?
- A. No.
- Q. At the time you arrested these boys you had intended (110) to interrogate them in reference to the murder of Jessie Collum and his family?
- A. No. I don't believe we were.
- Q. You had knowledge of the Jessie Collum murder, though, at the time you arrested them?
- A. Oh, very definitely, yes, sir.
- Q. And as far as you were concerned Donnie and Scotty Collum were suspects?
- A. Yes, sir.
- Q. Did you or Officer Woodrum in your presence ever ask Mrs. Peggy

(110)

Mendoza whether or not she would like to be present during these interviews?

A. I did not ask her that, no, sir.

Q. And Sergeant Woodrum, did he?

A. Not that I recall, no, sir.

Q. Did you ever check to see whether the handcuffs were cutting Scotty Collum's wrists?

A. No, sir.

Q. Did you ever inquire of Scotty Collum whether the handcuffs were too tight?

A. No, sir.

Q. Do you recall loosening the handcuffs after the taped interview was done?

A. I don't think the handcuffs were on during the interview.

Q. But the handcuffs were on before the taped interview began?

A. The handcuffs were on from the place of arrest to the sheriff's office. They were changed from behind his back to the chair in the interview room. And after we started -- you

(110)

(111)

know, before (111) we started the interview we removed them.

Q. What time did the detectives from Louisiana arrive at the Victorville Sub-Station?

A. It seems to me that it was close to midnight or maybe even after midnight.

Q. Shortly after their arrival, did you play this tape that you received from Scotty for these detectives?

A. It was -- I believe it was played for them on the way back from the airport in the car.

Q. In the car on the way back from the airport?

A. Uh-huh. (Indicating affirmatively)

Q. Besides playing the tape, you did discuss the nature of the statements made with these detectives?

A. Yes, sir. We did.

Q. During this interview with Scotty Collum, was he given anything to drink?

A. I believe that I got him some water, yes, sir.

(111)

Q. Was he given any food during this interview?

A. I don't believe we gave him food. I think I gave him water, and I think I gave him cigarettes.

Q. And during this interview did Scotty ask what would happen if he admitted certain crimes?

A. Which interview are you talking about? I mean, which segment of the interview?

Q. Well, at any point after four p.m., during that first two or two and a half hour period.

A. After we talked about some of the fallacies in the story of the Cadillac and his father going to Texas with the family, I think he said something that, "Yes. I was involved in it," and you know, (112) "What was going to happen to me," you know. And I think at that time we discussed the California juvenile law and what could possibly happen to him.

Q. Specifically, would you state what you told him, as best you can recall?

A. Well, I told him that I was not

(112)

(112)

familiar with the juvenile laws of the state of Louisiana and all I could advise him was what would happen or what could possibly happen if his case was a California case. And I told him because of his age and if he had no involvement with law enforcement, you know, we would write up the case, submit it to the juvenile authorities, and the juvenile court at that time could either agree to accept the case or they could disqualify him as a juvenile and refer back to adult court, that he could go to the youth authority until I think he was 25. But basically it's pretty difficult to tell someone in California exactly what's going to happen to them.

Q. You did tell him, though, that the juvenile authorities could refuse to accept charges against him?

A. I believe I did, yes, sir.

Q. And you explained the effect of such a refusal?

A. That he would be tried as an adult, yes, sir.

Q. Did you also tell him that if they refused to accept charges he could possibly be released?

(112)

A. No, sir.

Q. Now, when you were explaining the California law to him, you didn't bother to explain the Miranda rights again at this time, did you?

(113)

A. No, sir.

Q. But you did explain a good bit about the California law as far as juveniles?

A. I explained to Scotty what he asked me to explain to the best of my knowledge and ability.

Q. You didn't explain to him at that time that any statement he said could be used against him in a court of law?

A. No, sir.

Q. In the early morning hours of June 4th did you have occasion to again return to the Red and White Trailer Park?

A. Yes, sir. I did.

Q. Specifically, where did you go in the trailer park?

A. To talk to Mrs. Mendoza.

(113)

(113)

(118)

Q. What was the nature of that visit, conversation?

MR. NAQUIN:

Your Honor, at this time the State is going to object. I fail to see any relevancy whatsoever as to what took place at the trailer park in the early morning hours of June 4th, many hours after the statements had been obtained. The motion to suppress is to show the free and voluntary nature of the statement which was completed as six o'clock.

MR. SMITH:

Your Honor, I think if -- of course, we don't know exactly what the nature of the conversation was at this time, but I think if the nature of the conversation dealt with

(118)

he won't be here on September 7th, I will allow this inquiry to proceed.

BY MR. SERPAS:

Q. Would you answer the question?

(118)

- A. Would you ask me again?
- Q. Did you at that time advise Mrs. Mendoza that she did not need an attorney for the two boys?
- A. In reference to extradition I advised her that it probably would be cheaper or economically better if she didn't get an attorney.
- Q. Did you tell her that it would be a waste of money to hire an attorney? Those words.
- A. Well, I may have said that. I don't know.
- Q. And that was the sole purpose for your visit that night?
- A. Well, yes, basically because of extradition proceedings, yes, sir.
- Q. You stated that when you were leaving the station you met Mrs. Mendoza in the lobby, I believe when you were leaving to go pick up the Louisiana authorities?
- A. No, sir. I didn't --
- Q. You didn't meet Mrs. Mendoza at all?
- A. I didn't say in the lobby.

(118)

(172)

- Q. Okay. Well, where did you meet her?
- A. Out in front of the office.
- Q. At that time was there a discussion by Mrs. Mendoza or between Mrs. Mendoza and you and Officer Woodrum in reference to hiring an attorney?
- A. No, sir. There was not.
- Q. About 9:30 or ten o'clock at night on June 3rd was

(172)

- Q. Do you see him in the courtroom?
- A. Yes, sir. The gentleman sitting over here in the brown shirt.

MR. BARBERA:

Let the record reflect that the witness has identified the juvenile, Scotty Lynn Collum.

BY MR. BARBERA:

- Q. What happened after that, Detective Rodrigue?
- A. We had -- after advising her of why we were there and asking her if she would like to be present during the

(172)

interview, and of course she declined to be present, she suggested that we talk to Scotty about the matter first, relative that he would probably be, you know, cooperative, that he would be willing to talk to us about the incident.

Q. Did you in fact interview Scotty Collum on that day?

A. Yes, sir. We did.

Q. About what time was it when you first saw Scotty Collum?

A. Approximately one o'clock in the interview room there at the Victorville Sub-Station.

Q. Who was present during the interview?

A. Present during the interview was Scotty Lynn Collum, myself and Major Diaz.

Q. Prior to the interview with Scotty, did you or Major Diaz advise Scotty of his rights, Miranda warnings?

A. Yes, sir. Major Diaz advised him of his Miranda rights from the card we carry on our persons while he was filling out -- I believe it was the B. of I. Sheet, I believe, he filled

(172)

out.

(176)

than yourself, Scotty, and Major Diaz?

A. Just the three of us.

MR. BARBERA:

Tender the witness.

CROSS EXAMINATION

BY MR. SERPAS:

Q. Lieutenant Rodrigue, was the time you saw Scotty Collum at the Victorville Sub-Station the first time you had ever seen him?

A. Yes, sir. It was.

Q. Where was he when you first saw him in Victorville?

A. When I first observed him it was in the interview room.

Q. Who directed you to that interview room?

A. One of the two gentlemen from California. I don't recall which one.

Q. Did Mr. Woodrum?

(176)

(176)

A. It could have been.

Q. Isn't it a fact that he was present in the interview room with you and Major Diaz at the beginning of the interview with Scotty Collum?

A. Not that I recall.

Q. Was Donnie handcuffed when you went into the interview room?

A. No, sir.

Q. At the beginning of the interview with Scotty, when you were filling in the I.D. Sheet, it was you or Major Diaz that filled it in?

A. It was Major Diaz.

Q. And it was Major Diaz that discussed his rights under the Miranda decision with Scotty?

(177)

A. He verbally advised him of his rights under the Miranda decision.

Q. And that at the beginning of this tape Major Diaz again discussed his rights with him?

A. He -- to my recollection, he asked him if he understood them and brought

(177)

out it was the same that the California authorities had advised.

Q. The discussion about his rights that are on the tape and the discussion at the beginning of the interview, were they basically the same?

A. Primarily pertaining to the same material.

Q. And it was done in about the same manner?

A. No, sir. The rights given were read off of a card, and the statement at the beginning of the tape would have been did he understand them and such as that.

Q. Were any tapes played in the car between the airport and the Victorville Sub-Station?

A. There was some tape played in the car. I could not tell you which.

Q. You're not sure as to whether or not all or part of one or more tapes were what was played in the car?

A. I understood that there was a tape of Scotty and Donnie. We listened to portions of a tape, or it possibly could have been two tapes.

Q. Did either Woodrum or Sodaro advise

(177)

you that the boys' mother was at the station waiting for you all to come?

A. I seem to recall that we were told that she was there.

A-88

TRANSCRIPT OF PROCEEDINGS
STATE IN THE INTEREST OF SCOTTY LYNN COLLUM
VOLUME II

A-89

(224)

Q. And what did you do?

A. Well, I went to the manager's apartment, because he had a telephone. And the boys had told me that they had moved, and I didn't know what Jessie's address was. So I figured if he had issued a warrant on this car that the police station would have his address and how to get ahold of him. And all these years Jessie had never paid child support. I never asked him for it. And I was going to tell him that if he didn't drop those charges I was going to press child support against him. And whenever I called the police down here I got disconnected three times before I got somebody that could tell me what was going on. And I asked if they could give me Jessie's address, you know, some way to get ahold of him. And he said, "Jessie's just been shot." And I -- you know, the first thing you say is, "My Lord." You don't -- you know -- after all, I was married to him for twelve years. And so he told me that he couldn't give me any information as to when or anything about it because it was up to the coroner. And so I said, "Well, did Lenore sign any charges on the car?" And he said, "No, 'mam. Lenore didn't sign anything." So I put the phone down and I went to the police station and I told the lady there

(224)

(225)

-- there was I guess a secretary or whatever you call it that answers the telephone. And I told her that I wanted to talk to the sheriff. And she told somebody else -- there (225) was a blond-headed man behind the desk also. And officer Sodaro came out, and I said, "there's been no warrant on that car," you know, "Jessie hadn't signed a warrant or Lenore hadn't signed a warrant." And I said, "You'll have to release my boys." And he said, "Well, now we just want to talk to them, ask them some routine questions," and he said, "Go on back home." And he said, "Whenever we get through," he said, "I'll send somebody over to tell you so that you can come get the boys." Okay. I went back home and I waited. And I kept calling in the meantime, and I must have called three or four or five times. And about -- it had to be approximately around 9:30 or ten. A policeman came back up there to the trailer, and he told me, "You can see your boys now." So I went back to the police station. And Officer Woodrum met outside the sheriff's office, you know, where the boys were. And he told me, he said, "I've got some bad news for you." And see, at this time I didn't know any of this other -- I thought Jessie had been shot -- you know, my boys had been home a week nearly. And he said,

"Your boys have confessed to four murders," and I went all to pieces. And so he told me, he said that I could see them, you know. So I went in. Me and Debbie was together all this time. And I went in and I sat down --

Q. Who is Debbie? (228)

approximately -- it had to be after twelve. It might have been one. And I told them that I was not going to sign any extradition papers because there was a -- Officer Sodaro called him a rookie. He wasn't a policeman like -- well, I guess he was a policeman, but he wasn't like a detective or anything. And he was standing here at the corner of the desk, and he told me that if he was me that he wouldn't sign extradition papers on the boys. So I went back in that little room there and I told the boys, I said, "I'm not going to sign extradition papers because it may not be the thing to do." So after I went home Officer Sodaro and Officer Woodrum came up to the house, and they wanted to know what that policeman's name was and that he had no right to tell me that at all. And I didn't give the man's name because the man was trying to help me and he didn't mean any disrespect to the police department, I'm sure, but he thought he was advising me right. And so they told me that

if I didn't sign extradition papers that all they had to do was get the Judge -- I mean the governor to sign it and that they would extradite them anyway. And Officer Sodaro told me that he had been a guard at Glen Helen Reformatory which is where they were going to send the boys. And he told me, he said, "Mrs. Mendoza," he said, "You don't want your boys in Glen Helen." He said, "It's a rough place." He said, "I was a guard there for five years," (229) and he said, "Believe me, you don't want your boys there." So I decided at that time to go ahead and sign extradition papers, because I figured if I didn't it would just make it rougher on them when they got down here, you know. And then I went and saw them the next morning. We had to go before the Judge in San Bernardino.

BY MR. O'NIELL:

Q. Now, Mrs. Mendoza, at the time that you were told by the Louisiana sheriff -- the Lafourche Parish Sheriff's Office that Jessie had been shot, were you told that Jessie was dead?

A. Yes. He told me that he --

Q. The first time?

A. No. He just told me that he had

(229)

been shot and that he couldn't tell when because he didn't know, that it was up to the coroner. And when he said coroner, I presumed that he was dead.

Q. But you assumed that this had been something that had occurred after the boys got back home?

A. Well, yes.

Q. Okay. Did you at anytime during this night have occasion to look at Donnie's wrists?

A. Yes, I sure did.

Q. What was the condition of them?

A. His wrists were bruised that night or the next morning when we went to -- I met them at the San Bernardino Courthouse to sign the extradition papers, and he was bruised on the wrist at that time too.

Q. Could you describe for the Judge where and how his wrists were bruised? (230)

A. Well, just where the handcuffs had been. He was -- his wrists were blue.

BY THE COURT:

Q. On both wrists?

(230)

(230)

A. On both wrists, yes, sir.

BY MR. O'NIELL:

Q. Were there any cuts on them or scratches?

A. No. I didn't notice any cuts or scratches.

Q. Mrs. Mendoza, when you first went to the sheriff's office at Victorville, did you ask to see the boys?

A. Yes, I sure did. That's what I was there for.

Q. You stated that you were told to go home. Do you remember exactly how you were told to go home?

A. He just told me, he said, "I realize there's no charges on the car." He said, "We're just holding them for --" how did he put that? Oh, he said, "Routine. He said, "Routine questioning." And I thought maybe they were going to ask them if they knew anything about, you know, people that might have been around or anything like that. I didn't know when it had happened, and I didn't associate it with the boys at all at that time.

Q. Why didn't you wait until they finished --

(230)

A. What?

Q. Why didn't you wait until they finished their questioning to bring the boys home?

A. Because they wouldn't let me. They told me to go home and that they would send somebody out there and tell me when I could come back. And he told me that I could call, which I did, several times. But the man wouldn't give me any information because (232)

in there. And I believe the district attorney, the name, you know, how to get ahold of him and everything. And he didn't never say that he was going to go in and talk to the boys. He never did tell me that. He said that he would -- I thought -- see, there was a whole room of policemen that had been in and out of this -- I guess where they were questioning the boys. That place was thronged with policemen.

Q. What kind of policemen?

A. Well, there was some of them like younger guys, you know, and some were older, and I would say there was never under eight men back in those hallways and things. See, I was sitting -- like, you go in --

(232)

(232)

there's a big desk thing. That's where the boys was. And I was talking to them all the time I was waiting for Officer Diaz and whatever that other man, Dennis Rodriguez or Rodicule, whatever his name is.

Q. Were these uniformed policemen?

A. Yes. Part of them were. Now, Officer Woodrum, the best I remember, I believe at the time of the arrest he had his uniform on. I'm almost sure he did. But whenever we got down there he had on a Hawaiian -- like a little sports shirt, you know, a short-sleeved shirt. And even whenever we talked to him there in the -- he called us in, you know, to talk to them before we talked to the boys, and was telling me how these people were killed, you know, and different things that (241)

A. Well, I was shaking all over and I was bawling.

Q. You were very upset, to say the least?

A. Yes. I was.

Q. You remained upset for the remainder of the night?

A. No. I prayed and the Lord gave me

(241)

(241)

strength to bear it. That's exactly what happened. And I prayed with my boys also.

Q. You did speak to your sons?

A. Yes. I did.

Q. Did either of them claim that they had been mistreated?

A. Mistreated?

Q. Yes. 'mam.

A. I asked Scotty Lynn why he had confessed or why he said what he did or whatever, and he said, "Mother, if they ask you questions for that long," he said, "you'd say you done it too."

Q. That's his exact --

A. That's his exact words. I swear to God.

Q. But neither of them complained of any force or physical pressure or anything like that, correct? I mean, they had not been physically abused in any manner that they complained of?

A. No. I don't think they had been beat or anything like that, no.

Q. There was no mention of that, certainly, correct?

(241)

A. No. Not physical abuse, no.

Q. When Major Diaz first approached you and was either introduced to you by someone else or introduced himself, did he tell you the purpose why he was there?

(293)

STATE OF LOUISIANA JUVENILE COURT
17TH JUDICIAL DISTRICT

IN THE INTEREST OF PARISH OF LAFOURCHE

SCOTTY LYNN COLLUM STATE OF LOUISIANA

SPECIAL JUVENILE NO.1233 DIVISION "A"

REASONS FOR JUDGMENT ON MOTION TO SUPPRESS

STATEMENT OF FACTS

On May 27, 1977, Jessie Collum, his second wife, Lenora, and their children, Anna and Jeffrey were killed in or near the Collum trailer in the Four Point Heights subdivision near the Raceland community in the Parish of Lafourche, State of Louisiana. All of these individuals had been shot several times, and Jessie Collum was stabbed twice. On May 29, 1977, Donnie Collum (age 15) and Scott Collum (age 14), the sons of Jessie Collum and his first wife, Mrs. Peggy Mendoza, were stopped by police authorities in Benson, Arizona in a 1974 Cadillac automobile belonging to Jessie Collum. The vehicle was left in Arizona and Scott and Donnie Collum were turned over to Mrs. Mendoza, and went to her home at the Red and White Trailer Park in Victorville, County of San Bernardino, California. On Wednesday, June 1, 1977, the bodies of the Collum family were discovered. Police authorities in Lafourche Parish determined at that

A-100

(293)

time that the 1974 Cadillac and Donnie and Scott Collum, who had been living with their father, were missing. On the night of June 1, 1977, and the morning of June 2, 1977, the Lafourche Parish Sheriff's Office sent out nationwide bulletins for the location of the Cadillac automobile belonging to Jessie Collum. On June 2, 1977, at 10:18 A.M. Central time the Lafourche Parish Sheriff's Office sent a bulletin to the San Bernardino County Sheriff's Office requesting information concerning the 1974 Cadillac and the location of Don Franklin Collum. On June 3, 1977, the Lafourche Sheriff's Office received information from the San Bernardino County Sheriff's Office concerning the location of Donnie and Scott Collum.

(294)

At approximately 4:30 P.M. Central time (2:30 P.M. Pacific time) warrants were issued in Louisiana for the arrest of Donnie Collum and Scott Collum for theft of the 1974 Cadillac. This information was telephoned to the San Bernardino County Sheriff's Office and then Sergeant Charles J. Sodaro, Detective Robert J. Woodrum and Detective Dennis Searcy went to trailers nine and ten at the Red & White Trailer Park, 16501 "D" Street, Victorville, California, and apprehended Donnie and Scott Collum. They were advised that they were charged with auto theft in the State of Louisiana, were handcuffed and placed in the Sheriff's unit.

A-101

(294)

(294)

Their mother, Mrs. Peggy Mendoza, who was present on the premises, was advised that they were being taken into custody for Louisiana for auto theft and told that if she would come down to the Victorville Sheriff's Office Sub-station she would be given more details. In the Sheriff's vehicle while going from the trailer park to the sub-station, Detective Robert J. Woodrum read the Miranda warning to Donnie and Scott Collum from a Miranda card that he carried on his person and they each individually advised him that they understood their rights. Neither of the two appeared to be under the influence of alcohol or any drug at this time. When they arrived at the sub-station the two were uncuffed and placed in separate interview rooms. At approximately 3:00 P.M. (Pacific time) Detective Woodrum and Sergeant Sodaro commenced an interview with Donnie Collum. He was reminded of his Miranda rights, which he acknowledged, and asked if he would speak to the officers concerning the theft of the car. He responded yes. He was then questioned concerning the the possession of the Cadillac. He was thereafter again reminded of his Miranda rights and told that his father had been shot to death. At this time he became very nervous and denied any involvement in the death. The interview was thereafter terminated at approximately 3:30 P. M. At approximately 4:00 P.M. Detective Woodrum and Sergeant (295) Sodaro comm-

(295)

A-102

(295)

enced taking a taped statement from him at 12:55 A.M. on June 4, 1977, (296) and this statement was concluded at 1:28 A.M. The officers then proceeded to interview Donnie Collum. Major Diaz read the Miranda rights to him from a Miranda card and Donnie indicated that he understood these rights. A taped statement was commenced at 1:47 A.M. and concluded at 2:08 A.M. On June 4, 1977, warrants of arrest for the murders of the Collum family were obtained from Judge Bernard L. Knobloch in Labourche Parish. On that same date Donnie Collum and Scott Collum, in the presence of their mother, waived extradition proceedings. On June 5, 1977, Major Diaz, Detective Rodrique and Donnie and Scott Collum left California to return to Louisiana. On June 8, 1977, a petition was filed with the Court by the Juvenile Officer of Lafourche Parish alleging that Scotty Lynn Collum was a delinquent child for the first degree murders of Jessie Collum, Lenora Collum, Anna Collum and Jeffry Collum and for auto theft. On July 18, 1977, this motion to suppress was filed by the defendant and this matter was heard on August 30, 31, and September 7, 1977. The Court ordered the transcript and memoranda from the parties and this motion to suppress was thereafter taken under advisement.

(296)

JURISDICTION

The juvenile court is the proper jurisdiction to consider the charges

A-103

(296)

lodged against Scotty Lynn Collum. Article V, Section 15, Louisiana Constitution of 1974; R.S. 13:1570 A (5); State v. Dubois, 334 So 2d 412 (1976).

LAW APPLICABLE TO THESE PROCEEDINGS

Since the arrest and the interrogations of the juvenile occurred in the State of California, the question is raised as to whether or not the law of California is applicable to any aspect of this case.

(297)

With reference to substantive law, the rule of lex loci delicti is applicable and the substantive law of Louisiana prevails since the offenses charged occurred in this state. This has been conceded by the parties. State v. Hopkins, 171 La 919, 132 So 501 (1931); 15 A Corpus Juris Secundum, Conflict of Laws, Sections 12 (1) and (3) at pages 451 and 464 to 466.

With reference to evidence and its admissability, the rule of lex fori is applicable and would require that the law of the forum, Louisiana, would be determinative. Harnischfeger Sale Corporation v. Sternberg Company, 179 La 317, 154 So 10 (1934); Wasson v. Gatling, 184 So 596 (2nd Cir, 1938); 15 A Corpus Juris Secundum Conflicts of Laws, Sections 22 (1) and (9) at pages 524 to 529 and 540 to 542; 31

(297)

(297)

Corpus Juris Secundum Evidence, Section 5 at pages 821-2.

VALIDITY OF THE ARREST OF THE DEFENDANT

The defendant claims that his arrest in California for theft of an automobile in Louisiana was illegal and that therefore any statements that he gave to the California and Louisiana authorities are illegally obtained and therefore inadmissible in these proceedings. The facts show that on the afternoon of June 3, 1977, Detective Robert Woodrum of the San Bernardino County Sheriff's Office contacted the Lafourche Parish Sheriff's Office and advised that Donnie and Scott Collum had been located in Victorville, California. Major Norman R. Diaz of the Lafourche Parish Sheriff's Office and Mr. Walter K. Naquin, Jr., of the District Attorney's Office of the 17th Judicial District then contacted Judge Bernard L. Knobloch to obtain warrants for the arrest of Donnie and Scott Collum for auto theft. Judge Knobloch was advised by telephone of the facts upon which the affidavits and warrants were based and he advised that he would issue the warrant. Detective Chris (298) Boudreaux of the Lafourche Parish Sheriff's Office then brought the affidavits and warrants to Judge Knobloch's office for execution. After the affidavits and warrants were executed, the San Bernardino County Sheriff's Office was notified that the warrants had been issued and was request-

(298)

(298)

ed to arrest Donnie and Scott Collum on the charge of auto theft. Major Diaz and Detective Dennis Rodrique then secured the affidavits and warrants from Detective Chris Boudreaux and left Lafourch Parish to fly to California to pick up Donnie and Scott Collum. See pages 101, 102, and 103 of the transcript; page 230 of the testimony of Detective Chris Boudreaux; and page 237 of the testimony of Judge Bernard L. Knoke.

The defendant contends that he was arrested prior to the time that a warrant was issued for his arrest. The evidence does not support this contention. The defendant was validly arrested pursuant to a warrant lawfully issued by a court of competent jurisdiction in the State of Louisiana. It is clear under the law that a peace officer may arrest a person when he has received positive and reliable information that another peace officer holds a warrant for the person's arrest. Article 213, Louisiana Code of Criminal Procedure. Further, even if a lawful warrant had not been issued a police officer may arrest a person who has committed a felony, even though the offense was not committed in the presence of the officer, when the peace officer has reasonable cause to believe that the person to be arrested has committed the offense. Article 213, Louisiana Code of Criminal Procedure. Even in the absence of a warrant, Detective Woodrum with the information supplied to him by

A-106

(298)

(299)

the Lafourche Parish Sheriff's Office had sufficient probable cause to believe that a felony had been committed and that the defendant in this proceeding was one of the persons who had committed it. Under the juvenile law of Louisiana any peace officer may immediately take into custody any child who is found violating (299) any law or ordinance. R.S. 13:1577 B. Further under Louisiana law, a Judge has authority to place a child in detention if it appears from an affidavit that such is necessary under the facts and circumstances of the case. R.S. 13:1575 C.

The Louisiana Supreme Court has consistently held that a technical illegality in an arrest does not impair the validity of a subsequent confession freely and voluntarily given after full Miranda warnings. State v. Unzueta, 337 So 2d 1102 (1976); State v. Jackson, 303 So 2d 734 (1974); State v. Harris, 297 So 2d 431 (1974); State v. Simien, 178 So 2d 266 (1966).

AUTHORITY OF MINOR TO CONSENT TO CONFESSION

The defendant urges that since he was 14 years of age at the time that he gave his confessions that he could not legally waive his constitutional rights and consent to give statements without the permission and/or presence of his mother. A person under the age of 18 is classified

A-107

(299)

as a minor (Article 37 of the Civil Code), a person under 17 is classified as a child (R.S. 13:1569 (3)), and a person is considered exempt from criminal responsibility under 10 years of age (R.S. 14:13).

It is hornbook law in Louisiana that a minor 17 years of age who is subject to the jurisdiction of the criminal district court can give a confession without parental consent. A juvenile charged with a capitol offense and subject to the jurisdiction of the criminal district court can give a confession without parental consent. In State v. Ross, 343 So 2d 722 (1977) a case dealing with a 16 year old charged with aggravated rape the Louisiana Supreme Court observed at page 725 of the Southern Reporter as follows:

Before a written confession can be introduced in evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, inducements or promises. La. R.S. 5:451 (300) La. Code Crim. P. art. 703 (C). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). A confession need not be the spontaneous act of the accused and

(300)

(300)

may be obtained by means of questions and answers. La. R.S. 15:453; State v. Simmons, 340 So.2d 1357 (La. 1976). While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that the age of a defendant does not of itself render a confession involuntary. State v. Sylvester, 298 So. 2d 807 (La. 1974). The voluntariness of the confession is a question of fact. State v. Demourelle, 332 So. 2d 752 (La. 1976); State v. White, 321 So.2d 491 (La. 1975)

It is well settled that admissibility of a confession is a question for the trial judge; its weight is for the jury. Conclusions of the trial judge on the credibility and weight of testimony relating to the voluntariness of a confession for the purpose of admissibility will not be overturned on appeal unless they are not supported by the evidence. State v. Hollingsworth, 337 So.2d 461 (La. 1976); State v. Sims, 310 So.2d 587 (La. 1975). (Emphasis added)

A juvenile who is charged with a non-capitol offense but whose case has been transferred to criminal district court may give a confession without parental consent. In State v. Hall, 350 So 2d 141 (1977), a

(300)

case dealing with a 16 year old charged with armed robbery who was transferred from the juvenile court to the criminal district court pursuant to R.S. 13:1571.1 et seq. for trial as an adult, the Louisiana Supreme Court at page 144 of the Southern Reporter observed as follows:

La. R.S. 14:451 provides that, before, a confession can be introduced into evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, supra. While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that the age of a defendant does not of itself render a confession involuntary. State v. Ross, 343 So.2d 722 (La. 1977) State v. Sylvester 298 So.2d 807 (La. 1974).

(301)

See also West v. United States, 399 F.2d 467 (5th Cir. 1968) cert. denied, 393 U.S. 1102, 89 S.Ct. 903, 21 L.Ed.

(301)

(301)

2d 795 (1969)

The record reflects that defendant in this case was fully informed of his Miranda rights on several occasions and that he signed a waiver of rights form. It additionally demonstrates that defendant was not threatened, abused, coerced or promised anything in return for his confession. Defendant presented no evidence to controvert the voluntary nature of his confession. After reviewing the record, we are convinced that the state satisfied its burden of affirmatively proving that defendant's confession was freely and voluntarily made after defendant had been fully advised of his Miranda rights. Accordingly, since there is no constitutional requirement of further "warning," the trial judge did not err in denying defendant's motion to suppress and in admitting his confession in evidence. (Emphasis added)

State v. Ghoram, 328 So 2d 91 (1976). Two cases dealing with confessions of juveniles in the juvenile courts support this view. In Re Campbell, 344 So 2d 711 (2nd Cir. 1977); In Re Melancon, 259 So 2d 609 (4th Cir, 1972). CF: In Re Holifield, 319 So 2d 471 (4th Cir. 1975). This view is also shared by most jurisdictions. West v. United States, 399 F. 2d 467 (5th Cir, 1968), cert. denied, 393 U.S. 1102 (1969); State v. Hardy, 107 Ariz. 583, 491 P. 2d

(301)

17 (1971); People v. Lara, 67 Cal. 2d 365, 432 P. 2d 202 62 Cal. Rptr. 586 (1967), cert. denied, 392 U.S. 945(1968); T.B. v. State, 306 So. 2d 183 (Fla. App. 1975); State v. Dillon, 93 Idaho 698, 471 P.2d 553 (1970), cert denied, 401 U.S. 942 (1971); People v. Pierre, 114 Ill. App. 2d 706 (1969), cert. denied, 400 U.S. 854 (1970); Commonwealth v. Cain, 361 Mass. 224, 279 N.E. 2d 706 (1972); State v. Hogan, 297 Minn. 430, 212 N.W. 2d 664 (1973); People v. Stephen J.B., 23 N.Y.2d 611, 256 N.E.2d 344, 298 N.Y.S.2d 489 (1969); State v. Dawson, 278 N. C. 351, 180 S.E. 2d 140 (1971); State v. Carder, 9 Ohio St. 2d 1, 222 N.E.2d 620 (1966); State v. Raiford, 7 Ore. App. 202, 490 P.2d 206 (1971); Commonwealth v. Moses, 446 Pa. 350, 287 A. 2d 131 (1971); Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S. W.2d 879 (1970); Theriault v. State, 66 Wis. 2d 33, 223 N.W. 2d 850 (1974); Mullin v. State, 505 P. 2d (302) 305 (Wyo), cert. denied, 414 U.S. 940 (1973). Parental presence and/or consent is apparantly only required in six states, two by judicial decision and four by statute. Lewis v. State, 259 Ind. 431, 288 N.E. 2d 138, 142 (1972); In re K.W.B., 500 S.W. 2d 275 (Mo. App. 1973); Colo. Rev. Stat. Ann. § 19-2-102 (3) (c) (I) (1973); Conn. Gen. Stat. Ann. § 17-66d(a) (West Supp. 1976); N.M. Stat. Ann. § 13-14-25 (a) (1954); Okla. Stat. Ann. tit. 10, § 1109 (a) (West. Supp. 1976).

At the time that Scott Collum was arrested his mother, Mrs. Peggy Mendoza,

(302)

(302)

was told of the charges against him and advised that if she came to the Victorville Sheriff's Sub-station she would be given more details. See page 37 of the transcript. Mrs. Mendoza visited with Donnie and Scott Collum between 9:30 p.m. and 12:00 midnight. Prior to taking a statement from Scott collum, Major Norman R. Diaz spoke to Mrs. Mendoza and secured her permission to speak with Scott. She advised Major Diaz at that time that she had been informed of the investigation by the California authorities and that Major Diaz should speak to Scott first as he would be the most cooperative. She was asked if she wished to be present at the questioning and she declined to do so and said that she had heard it before. See page 90, 126, and 127 of the transcript.

No Louisiana jurisprudential or statutory authority has been found to directly support the requirement of parental presence and/or consent for the validity of a minor and/or juvenile giving a confession. Such is clearly not the rule for 17 year old minors or for juveniles under 17 who are subject to the jurisdiction of the criminal district court. The great weight of authority supports that rule that a minor under 18 or a child under 17 can consent to give statements to police authorities and waive his constitutional rights without parental consent and/or presence.

(303)

Age and/or parental presence is a factor in determining the free and voluntary nature of the confession but it is not controlling. This court is of the opinion that this is the better rule and will apply it to the facts of this case.

OBTAINING CONFESSION OF MINOR AT POLICE STATION

The defendant alleges that the fact that the confessions were obtained from the defendant at the Victorville Sheriff's Sub-station in view of his age of 14 and contrary to the law of California and Louisiana (R.S. 13:1577) renders them inadmissible. In support of this proposition the defendant cites the cases of In re Wesley, 285 So 2d 308 (4th Cir, 1973), In re Garland, 160 So 2d 344 (4th Cir, 1964). The defendant also cites R.S. 13:1577 C which provides as follows:

Except as hereinafter provided, no child shall be confined in any police station, prison, or jail, or be transported or detained in association with criminal, vicious or disoluted persons. A child 15 years of age or older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults.

Scott Collum was not "detained in association with criminal vicious or disolute persons." After he was brought to the Victorville Sub-station he was either kept

(303)

(304)

in an interview room or in the juvenile section of the facility. It is clear that his detention was authorized by the warrant issued by Judge Knobloch. Was Scott Collum "confined" in the Victorville Sheriff's Sub-station? In drafting the first sentence of Sub-paragraph C of R.S. 13:1577 the legislature used the word "confined" and then the disjunctive "or" and thereafter used the word "detained". It could be argued that by using this construction that the legislature intended that "confined" be given a different connotation than "detained" and that the mere detention of a juvenile in such a (304) place during the initial stages or commencement of an investigation for a short period of time does not constitute a "confinement".

The Louisiana Supreme Court has rendered admissible confessions of juveniles who were subjects to the jurisdiction of the district court even though they had been given in police stations, police headquarters, or the district attorney's office. State v. Ross, supra; State v. Whatley, 302 So 2d 123 (1975); State v. Sylvester, 298 So 2d 807 (1974). It would appear that the better rule in cases of this type is that the fact that a confession was taken at a police station is a factor to be considered in determining the free and voluntary nature of the confession and as a part of the "totality of the circumstance", but that such a factor is not in and of itself controlling. In re Campbell, supra; In re Melancon, supra, West v. United States,

(304)

supra; CF In re Holifield, supra.

Where a constitutional right has been right has been violated either in advising a person of his right to counsel or his right against self incrimination a confession subsequently given is inadmissible. Miranda v. Arizona, 384, US 436, 86 S Ct. 1602, 16 L.Ed. 2d 694 (1966). Violation of a statutory mandate which specifically applies to the admissibility of confessions will render it inadmissible. R.S. 15:451. However, R.S. 13:1577 is not a constitutionally granted right nor is it a provision of our statutory law which is specifically directed to the admissibility of a confession. Accordingly, it is the opinion of this court that the better rule is that violation of such a statute should be a factor to be considered but is not controlling.

(305)

USE OF TAPES OF STATEMENTS ON ISSUE
OF FREE AND VOLUNTARY NATURE

During the trial of the motion of suppress the defendant objected to the court admitting the taped statements of Scott Collum in evidence for the limited purpose of their relevance on the issue of the free and voluntary way in which they were obtained. Such a practice has been recognized by the Louisiana Supreme Court. In the case of State v. Trudell, 350 So 2d 659 (1977) at page 662 and 663 of the Southern reporter